

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of
CLYDE R. SPENCER,
Petitioner.

FILED
JUL 12 PM 12:57
BY RONALD J. CARPENTER
CLERK
NO. 84137-3
RULING DENYING REVIEW

The State seeks discretionary review of a published Court of Appeals decision granting Clyde Spencer's personal restraint petition and remanding to the trial court to allow Spencer to withdraw his *Alford*¹ plea to multiple sex offenses allegedly committed against his son, daughter, and stepson more than 25 years ago. RAP 16.14(c); RAP 13.5A(a)(1).

Mr. Spencer was a Vancouver city police officer. In the fall of 1984 he was investigated for allegedly sexually abusing his five-year-old daughter, K.S., and his eight-year-old son, M.S. Mr. Spencer's daughter initially indicated that she was abused by multiple persons, including her mother (Mr. Spencer's former wife), but the investigation focused on Mr. Spencer. The children were interviewed multiple times by Clark County Sheriff's Detective Sharon Krause. K.S. indicated to Krause that her

¹ In an *Alford* plea, the defendant does not admit guilt but concedes that the state's evidence is strong and most likely will result in conviction. *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

591/19⁷



father had abused her. In contrast, M.S. denied his father had abused him, and he adhered to that denial for months.

The Clark County Sheriff's Office submitted its investigation report on K.S. to the King County Prosecutor's Office for an independent evaluation. In November 1984 King County Senior Deputy Prosecutor Rebecca Roe, known for her expertise in prosecuting child sex abuse cases, opined that the case was unwinnable because significant inconsistencies in K.S.'s version of events indicated an inability to distinguish fact from fantasy. In December 1984 a deputy prosecutor conducted a videotaped interview of K.S., assisted by Ms. Krause and K.S.'s mother, but the tape was not disclosed until October 2009. Notwithstanding Ms. Roe's assessment, the State charged Mr. Spencer in January 1985 with first degree statutory rape and indecent liberties committed against K.S.

Meanwhile, Mr. Spencer's then-current wife, Shirley Spencer, entered into a sexual relationship with the lead detective investigating the case. That detective supervised Ms. Krause, whom he notified of the relationship. While the charges were pending against him, Mr. Spencer stayed in a motel. Ms. Spencer dropped off her son, M.H., to spend the night with Mr. Spencer. Afterward, Ms. Spencer alleged that her son reported being abused by his stepfather while at the motel. Detective Krause interviewed M.H., who related that Mr. Spencer engaged in sexual intercourse with him, including penetrating the boy's rectum with his penis. The allegation resulted in the State adding three counts of first degree statutory rape committed against M.H.

As noted above, Mr. Spencer's son M.S. originally denied being abused. But after persistent interviewing by Ms. Krause, including an alleged threat to make the boy undergo a polygraph examination, M.S. reported that his father had abused him. Medical examinations of K.S. and M.H. disclosed no physical evidence of

molestation despite their reports of repeated anal and vaginal intercourse. The State did not disclose those reports.

Ultimately, the State charged Mr. Spencer with 16 counts: 10 counts of first degree statutory rape and six counts of complicity to first degree statutory rape. The complicity counts were based on allegations that Mr. Spencer forced the children to engage in sexual intercourse with each other. One or more of the children purportedly alleged that Mr. Spencer took photographs of the sexual activity, but the State found no such evidence.

In May 1985 Mr. Spencer, who was heavily medicated at the time for depression, entered an *Alford* plea to 11 counts: seven counts of first degree statutory rape (two involving K.S., two involving M.S., and three involving M.H.) and four counts of complicity to first degree statutory rape (one involving K.S. and M.S., two involving M.S. and M.H., and one involving K.S. and M.H.). The trial court imposed two consecutive life sentences on the first two statutory rape charges (one involving K.S., the other involving M.S.) and 171-month sentences on each of the remaining nine counts, to run concurrently with each other but consecutive to the life sentences.

Mr. Spencer collaterally challenged his judgment and sentence without success. He had partial success in 1995 when the United States Court of Appeals for the Ninth Circuit remanded his case to the United States District Court for the Western District of Washington for an evidentiary hearing on various issues, including Mr. Spencer's competency at the time of his plea and the State's nondisclosure of medical reports. *See Spencer v. Klauser*, 70 F.3d 1280, 1995 WL 710610 (9th Cir.) (unpublished). But after the evidentiary hearing, the district court denied habeas relief, and the Ninth Circuit affirmed, reasoning that the medical reports would not have caused Mr. Spencer to choose a trial over pleading guilty. *See Spencer v. Klauser*, 129 F.3d 127, 1997 WL 686029, at *1 (9th Cir.) (unpublished).

Mr. Spencer sought a commutation from then-Governor Gary Locke. M.S. signed a letter urging the governor to deny commutation. In 2004, apparently after Mr. Spencer finished his 171-month sentence and had started serving his first life sentence, Governor Locke conditionally commuted his sentence. The governor specifically made note of the withheld medical reports, the lack of alleged photographic evidence, Ms. Krause's questionable interview techniques and the children's inconsistent stories, and the affair between Ms. Spencer and the lead detective. The commutation required Mr. Spencer to complete three years of community supervision, which he accomplished.

A newspaper reporter investigating the case contacted M.S. The reporter facilitated M.S.'s contact with Mr. Spencer for the first time since the convictions. Meanwhile, K.S. took an interest in the case and contacted her brother, and she later met with Mr. Spencer for the first time in more than two decades. In 2006 M.S. sent a letter to Governor Christine Gregoire urging her to grant Mr. Spencer a full pardon. M.S. asserted in the letter that relentless interviews by law enforcement officers, including Ms. Krause, browbeat him into falsely accusing his father of abusing him.

In December 2007 Mr. Spencer filed the current personal restraint petition in Division Two of the Court of Appeals, seeking to have his convictions vacated or to hold a reference hearing. The petition was supported by the sworn declarations of M.S. and K.S. M.S. asserted that his father had never molested him and that he had never seen his father molest K.S. or M.H. K.S. claimed that she had no memory of being molested by her father and no recollection of any sexual activity involving M.S. or M.H. K.S. further asserted that if she had been sexually abused as described in police reports (repeated vaginal and anal intercourse), she would remember it.

The Court of Appeals ordered the trial court to conduct a reference hearing limited to determining whether M.S.'s and K.S.'s testimony at the hearing would be

consistent with their declarations. M.S. and K.S. testified at the reference hearing and were subjected to an extensive cross-examination by the State. Regarding the letter addressed to the governor, M.S. claimed it was actually written by their mother and that they merely signed it. K.S. recalled her mother asking M.S. to sign the letter. The trial court entered written findings that the testimony was factually consistent with the written declarations. The Court of Appeals then issued a published decision holding that the factual basis for Mr. Spencer's *Alford* plea was so undermined as to justify withdrawal of the plea. *See In re Pers. Restraint of Spencer*, 152 Wn. App. 698, 715, 218 P.3d 924 (2009). The State moved for reconsideration, introducing new evidence, including a transcript of a recent interview with M.H. in which he agreed with abuse allegations read to him by a deputy prosecutor. The State also submitted the previously undisclosed 1984 interview video, which had been in Ms. Krause's personal possession since that time.² The court denied reconsideration. The State now seeks this court's discretionary review.

To obtain this court's review, the State must demonstrate that the Court of Appeals decision conflicts with a decision of this court or another Court of Appeals decision, or that it is raising a significant constitutional question or an issue of substantial public interest. RAP 13.4(b). The State fails to address these criteria, much less shows that any of them applies.

A defendant may withdraw an *Alford* plea for manifest injustice when newly discovered evidence, viewed in balance with the record, changes the factual basis for the plea. *In re Per. Restraint of Ice*, 138 Wn. App. 745, 748, 158 P.3d 1228 (2007), *review denied*, 163 Wn.2d 1008 (2008). The Court of Appeals held that M.S.'s and K.S.'s recantations, viewed in light of the record, undermined the factual basis for Mr. Spencer's *Alford* plea sufficiently to justify withdrawal. I agree. Eight of

² Ms. Krause claimed she stumbled upon the recording while cleaning out her garage.

the 11 charges were based on statements extracted from K.S. and M.S. in a highly questionable interview method. Both have recanted, albeit M.S. with greater force than his sister. The recantations are plausible when viewed in light of the interview method, the failure to disclose the medical report of K.S. (which showed no physical evidence of sexual abuse), and the absence of evidence to corroborate the children's allegations that Mr. Spencer photographed the abuse. And the undisputed fact that Ms. Spencer engaged in sexual relations with the lead detective casts a shadow over the entire case.

The sudden appearance of an interview videotape after nearly 25 years further undermines the reliability of the State's prosecution of Mr. Spencer. The notion that the State would simply lose track of and forget about a videotape in which a prosecutor interviews a complaining witness is difficult to fathom. As the Court of Appeals properly observed in its order denying reconsideration, the tape (which I have viewed) undercuts the State's theory of the case, since it confirms the unreliable child interview techniques the State employed at that time and indicates a potential disclosure violation that may be sufficient on its own to justify collateral relief.

The State complains that the Court of Appeals improperly weighed witness credibility. But the State itself urged the Court of Appeals to hold that the recantations lacked credibility. The Court of Appeals merely directed the trial court to determine whether M.S.'s and K.S.'s testimony was consistent with their declarations. The trial court found the testimony to be consistent, and the record amply supports those findings. The Court of Appeals properly relied on the trial court's findings in determining in light of the record properly before it whether the new evidence undermined Mr. Spencer's *Alford* plea so as to justify collateral relief.

The State relies heavily on M.H.'s "statement" (presented for the first time in its motion for reconsideration) that the rape allegations pertaining to him were

No. 84137-3

PAGE 7

true.³ Given that not all of the complaining witnesses recanted, the Court of Appeals properly limited Mr. Spencer's remedy to withdrawal of the plea, rather than outright reversal of the convictions. *See State v. Macon*, 128 Wn.2d 784, 804, 911 P.2d 1004 (1996) (reversal required where recanted evidence was sole basis for conviction). In any event, M.S. unequivocally stated that he did not see his father engage in any abuse involving M.H. And K.S. stated that she could not recall seeing any such abuse and that she would have remembered it if she had. Moreover, the previously undisclosed medical report regarding M.H. showed no signs of physical abuse even though he was examined not long after Mr. Spencer allegedly anally raped him.⁴ Furthermore, M.H. made his disclosures to Ms. Krause, who seemingly employed the same questionable techniques she applied when interviewing M.S. and K.S. And M.H.'s mother was then having an affair with Ms. Krause's supervisor. Although M.H.'s unrecanted allegations alone may form a factual basis for supporting an *Alford* plea on the statutory rape charges pertaining solely to him, the record clearly indicates that Mr. Spencer pleaded to all charges as part of a package deal. He is therefore allowed to withdraw his plea on all counts. *See State v. Weyrich*, 163 Wn.2d 554, 556 n.2, 182 P.3d 965 (2008).

The motion for discretionary review is denied.


COMMISSIONER

July 12, 2010

³ M.H.'s "statement" is the transcript of an interview in which he indicates agreement with portions of the plea hearing transcript read to him by a deputy prosecutor.

⁴ As noted above, the federal court denied habeas relief on the basis of the undisclosed medical reports, but that was before M.S. and K.S. came forward with their recantations and before disclosure of the video recording of the 1984 interview.

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAYMOND SPENCER,

Petitioner,

vs.

JOSEPH KLAUSER, Warden, Idaho
State Institution; CHRISTINE
GREGOIRE, Attorney General,
State of Washington,

Respondents.

No. C94-5238RJB

COPY

DEPOSITION UPON ORAL EXAMINATION

OF

SHARON A. KRAUSE

DATE TAKEN: May 22, 1996

TIME: 10:30 a.m.

PLACE: Hall of Justice
Longview, Washington

SUZAN R. WELLS
Archer Associates, Inc.
P. O. Box 1092
Longview, Washington 98632
(360) 423-2195

PLAINTIFF'S
EXHIBIT

2

A Yes. I'm sure it was.

Q What was significant about that? Why was that a problem?

A Well, I think that's a big problem. We weren't looking at one. There could have been others. The other thing that concerned me personally was that I remember him saying some of the other men had guns on their ankles.

Q You were concerned that these other potential suspects might be police officers?

A Absolutely.

Q Was there an investigation that followed up on that?

A There was. And I remember Jim Holtz and I discussing that.

Q Jim Holtz was with the Vancouver Police Department?

A Was the detective who was doing it. Other than that, I can't really tell you. We were never able to identify, you know, if there was, who they were.

Q Now, during the period of time of the Spencer investigation, did you become aware that your supervisor, Mike Davidson, began having a romantic relationship with Shirley Spencer?

MR. SAMSON: I'll object on the grounds of relevancy. This claim was addressed by the ninth circuit and was rejected by the ninth circuit so I don't think the issue is really relevant anymore to this

TE
-84SPOSITION
SECTION ADDI-

ENTION

1)

9

rded

ical Cer

i on

Ing

CASE NO.
84-8506

HIBIT

1 action. But you can answer if you want.

2 Q (By Mr. Camiel:) You can answer.

3 A I was aware of it, yes. So was everybody else.

4 Q Was that ongoing while you were conducting your
5 investigation?

6 A My memory of that, that was way on into the
7 investigation that I became aware of that. And I don't
8 -- I don't remember if it -- You know, it's been so
9 long. My recollection of that is that when I became
10 aware of that, it was long after I had interviewed
11 Little Matt. And I don't remember if it was before he
12 pled or after, to be honest with you. But at some point
13 I became -- but it was --

14 Q At the point where you learned about it, you've
15 indicated that it was long after you'd interviewed
16 Little Matt.

17 A It seems to me. That's what I think it was. That's my
18 memory.

19 Q I wanted to identify "Little Matt" as Matt Hansen.

20 A Correct.

21 Q Matt Hansen is the Matt that lived up here in the state
22 of Washington?

23 A Right. His mother is Shirley Spencer.

24 Q When you learned that your supervisor, Michael Davidson,
25 was involved with Shirley Spencer, at the point where

1 you learned that, was it your understanding that their
2 relationship had been going on for a period of time?

3 MR. SAMSON: I'll object.

4 Irrelevant. But you can answer.

5 THE WITNESS: What I remember is --

6 At the point I was told about it, my impression was it
7 hadn't been going on very long. I didn't ever get the
8 impression that this was a thing that had been going on
9 for years, if that's what you're wondering. At some
10 point I became aware that they were seeing each other,
11 but I didn't get the impression that it was a long --
12 they'd been seeing each other for a long time.

13 Q (By Mr. Camiel:) Did it -- Was it your impression
14 they'd been seeing each other for several weeks or a
15 matter of months?

16 A I can't really say. I would say weeks maybe at the time
17 I became aware. Well, it was enough that he felt like
18 he needed to tell me, I guess.

19 Q You learned about it from Sergeant Davidson?

20 A Yes.

21 Q Did the fact that Sergeant Davidson was in a
22 relationship with Shirley Spencer affect the way you
23 handled the Spencer investigation?

24 A Absolutely not.

25 Q Did you continue to have your reports reviewed by

1 Sergeant Davidson?

2 A I don't know that he was actively reviewing my reports.
3 Again, a lot of times it's just verbal what's going on.
4 You sit down and talk about it. I don't know that he
5 was reviewing my reports, to be honest. There's a good
6 possibility he wasn't.

7 Q But he was obviously aware that you were the lead
8 detective in the Spencer case?

9 A Surely.

10 Q And that one of the victims was Shirley Spencer's son?

11 A That's correct.

12 Q And he felt the need to advise you that he was in a
13 relationship with Shirley Spencer?

14 A That's correct.

15 Q Did you become aware at any point in time as to whether
16 or not Sergeant Davidson had been having contact with
17 Ray Spencer while Ray was in the jail?

18 MR. SAMSON: Objection. Irrelevant.

19 Q (By Mr. Camiel:) You can answer.

20 A I don't recall that. I don't recall being aware of that.

21 Q At any point in time did you become aware that Sergeant
22 Davidson had been going to the jail and talking to Ray
23 Spencer?

24 MR. SAMSON: Objection. Irrelevant.

25 THE WITNESS: No. I don't remember

EXHIBIT 3

United States District Court
Western District of Washington

CLYDE RAYMOND SPENCER

Petitioner,

vs.

JOSEPH KLAUSER, Warder, Idaho State
Institution,

Respondent.

Case No.

C94-5238 RJB

DEPOSITION OF JAMES MATTHEW PETERS

July 30, 1996

Reported by
Jodi C. Williams

ORIGINAL

**PLAINTIFF'S
EXHIBIT**

3

**THE COURT REPORTERS
TUCKER
AND ASSOCIATES**

208-345-3704 • 1-800-424-2354

Fax 208-345-3713

605 WEST FORT STREET

P.O. BOX 1625 • BOISE, ID 83701

Home Page: <http://www.webfactor.com/tucker/>

E-Mail: tucker@mcl.net

DEPOSITION OF JAMES MATTHEW PETERS, taken at the instance of the petitioner, at the United States Attorney's Office, 877 West Main Street, First Interstate Center, Suite 201, in the City of Boise, State of Idaho, commencing at 9:30 a.m., on Tuesday, July 30, 1996, before Jodi C. Willilams, Court Reporter and a Notary Public in and for the State of Idaho, pursuant to notice, and in accordance with the Federal Rules of Civil Procedure.

APPEARANCES

For Petitioner

MAIR CAMIEL & KOVACH, P.S.
by PETER A. CAMIEL
710 Cherry Street
Seattle, Washington 98104

For Respondent

UNITED STATES ATTORNEY'S OFFICE
CORRECTIONS DIVISION
by DONNA MULLEN
Assistant Attorney General
Post Office Box 40116
2411 Chandler Court
Olympia, Washington 98504-0116

1 A. Because of the sensitive nature of the
2 case as the consequence of Mr. Spencer's position
3 in the police department.

4 At the time, I was responsible for
5 reviewing and making final decisions in all child
6 sexual abuse and rape cases. And in the Clark
7 County prosecutor's office and in the routine
8 average case, that was not a problem.

9 Sensitive cases or cases that were close
10 calls, I would review it and refer the case to Art
11 Curtis, who was the elected prosecutor. . . .

12 And in my view, that case, as initially
13 presented, was not provable. But I didn't want to
14 make that call myself because Mr. Spencer was a
15 policeman. And I didn't want to be accused of
16 favoritism or have someone suspect that he got
17 better treatment because he was a police officer.

18 And so we referred it to an outside
19 agency who didn't know Mr. Spencer. I knew
20 Mr. Spencer. But someone who was completely
21 independent and asked them make an independent
22 judgment.

23 Q. Do you know what materials were forwarded
24 to the King County prosecuting attorney?

25 A. I assume everything we had.

1 Q. What was the result of the King County
2 prosecutor's review of the case?

3 A. Now, you have to understand that the case
4 was reviewed only when we had one victim, a female,
5 five-year-old victim.

6 Q. Yes.

7 A. The status of the case changed later when
8 two other children came forward with allegations.

9 But at the time, they concurred with me
10 that the case wasn't provable. And we declined it
11 as a result of that.

12 Q. Why did you believe the case wasn't
13 provable?

14 A. I don't remember the specifics. That's
15 12 years ago. I don't remember the specifics of
16 why not.

17 But at the time and to this day, I go
18 through a three-step analysis with every criminal
19 case. And that is, first, to determine whether it
20 appears that a crime was committed. And, secondly,
21 whether I can prove it beyond a reasonable doubt.
22 And, third, whether there is some reasonable way
23 short of bringing the power of the government down
24 on somebody to resolve the matter, such as pretrial
25 diversion or civil compromise or something short of

1 I remember one dramatically. It was a
2 doctor from Kaiser who had taken a photograph of a
3 gaping rectum of a girl who was about eight who had
4 been subjected to chronic penetration with a
5 foreign object by her mother and brother. And I
6 remember that one clearly because the photo was so
7 dramatic.

8 No others immediately jump out.

9 Q. Focussing your attention on the Spencer
10 case, do you recall the types of allegations that
11 the female victim, Kathryn Spencer, was making?

12 A. No.

13 Q. Do you recall the types of sexual abuse
14 that she was alleging?

15 A. No.

16 Q. Were you ever involved in an interview
17 with her?

18 A. I believe I was in the presence of a
19 defense attorney in Sacramento.

20 Q. You indicated earlier that when the only
21 victim was Kathryn Spencer, upon your initial
22 review of the case, you believed the case wasn't
23 provable. Do you recall why you thought that?

24 A. No. Probably the absence of
25 corroboration or -- I just don't remember. If I

1 Q. DeAnne?

2 A. I met them both.

3 Q. It was DeAnne?

4 A. Yes.

5 Q. Did you ever interview Matt Hansen?

6 A. I don't think so. It was never my
7 practice, nor is it my practice now, to get
8 involved in interviews with child molesting victims
9 unless I'm certain the case is going to go to
10 trial. I think they have to tell their story to
11 too many grown-ups that they don't know without
12 having to meet another grown-up and tell the ugly
13 details to them.

14 So I don't have any memory of doing that,
15 and it wouldn't have been my practice to do that.

16 Now, if I had, there would be detailed
17 notes because I always took notes. And there would
18 be notes in the file. So I'm not saying I didn't,
19 but I don't think I did.

20 That case was heading toward trial. But
21 I usually didn't get involved with actually
22 preparing the child for trial until a couple of
23 weeks before when I was sure it was going to go.

24 I might have met them. And, in fact, my
25 practice would have been to meet the child, take

EXHIBIT 4

1 JAMES M. PETERS, PETITIONER'S WITNESS, SWORN OR AFFIRMED
2 DIRECT EXAMINATION

3 BY MR. CAMIEL:

4 Q. Would you state your full name and spell your last name,
5 please.

6 A. My name is James Matthew Peters. P-e-t-e-r-s.

7 Q. And your professional address?

8 A. Box 32, Boise, Idaho.

9 Q. Mr. Peters, how are you currently employed?

10 A. I'm an assistant United States attorney in the District of
11 Idaho.

12 Q. Were you previously employed as a deputy prosecuting
13 attorney in Clark County?

14 A. Yes, I was.

15 Q. And were you the primary deputy prosecuting attorney in the
16 case involving Mr. Spencer?

17 A. That's true.

18 Q. Mr. Peters, do you recall when charges were initially filed
19 against Mr. Spencer?

20 A. No, I do not.

21 Q. Do you recall the fact that there was more than one
22 information filed against Mr. Spencer?

23 A. Yes.

24 Q. It was amended on occasion.

25 A. I do recall that.



1 the request of the attorney general for an item. So if that's
2 review, then, yes.

3 Q. All right. And was the item that you were looking for the
4 medical examination report pertaining to Kathryn Spencer?

5 A. That's right.

6 Q. Do you recall now whether or not back when you were handling
7 the Spencer case you were aware of the fact that Kathryn Spencer
8 had been seen by a physician down in California for a sexual
9 abuse examination?

10 A. I do not recall that.

11 Q. You don't recall whether you knew that at the time?

12 A. I don't believe I -- I don't have any recollection that she
13 had seen a physician, but I don't have many recollections about
14 this case because it was so long ago and there have been so many
15 cases since then.

16 Q. When you went to review the Clark County Prosecutor's file
17 to see if there was this medical examination report within the
18 Clark County Prosecutor file, had you at that point in time
19 received a copy of the report so that you knew what to look for?

20 A. No.

21 Q. If you could turn to Exhibit 1 in the notebook.

22 That's the medical examination report I've asked you about.
23 Have you seen this report recently?

24 A. Yes.

25 Q. When you reviewed the prosecutor's file in the last several

1 weeks or few months, did you see this report anywhere in the
2 prosecutor's file?

3 A. No, it wasn't there.

4 Q. Did you review the Clark County Sheriff's office files while
5 you were at the -- about the time you were in the prosecutor's
6 files?

7 A. Yes, sir, I did.

8 Q. And did you find this report in the sheriff's office files?

9 A. Yes.

10 Q. If you could turn to Exhibit No. 12 in the book.

11 Did you find attached to the medical report, Exhibit No. 12,
12 Sharon Krause's utility report?

13 A. I don't recall. I wasn't looking for a utility report.

14 Q. Turn your attention back to late 1984 and 1985 at the Clark
15 County Prosecutor's office. I want to ask you about how
16 discovery was handled in criminal cases. Once charges were
17 filed against an individual and a person was arraigned, what was
18 the practice at that time with regard to discovery?

19 A. We had an open file system at that time. Defense attorneys
20 came in, and in lieu of making a formal discovery motion to the
21 court, they signed a waiver form where they agreed not to copy
22 or otherwise disseminate any of the information that they
23 received from us. It was voluntary discovery, and if they would
24 agree to do that, and to my knowledge they always did, we just
25 gave them complete open access, and as a consequence, they got

1 MR. CAMIEL: I don't have that. I don't know if the
2 attorney general has it.

3 MR. SAMSON: We will attempt to find it, Your Honor.

4 THE COURT: If you have it, I would like to see it, and
5 maybe Mr. Peters would.

6 Q. (By Mr. Camiel) Mr. Peters, during the pendency of the
7 Spencer case, did you involve yourself in the interviews of any
8 of the three victims?

9 A. I recall being present at interviews of two of the children
10 in Sacramento, California. Those were the defense attorney's
11 interviews. As to whether I interviewed the Hansen boy, I don't
12 have independent recollection. If I had, I would have taken
13 notes, and those notes would be in the file.

14 I specifically recall going to Sacramento because that's the
15 only time I ever did that in the eleven years I was in the
16 prosecutor's office, and so that stands out in my mind.

17 Q. All right.

18 MR. CAMIEL: Your Honor, the attorney general's office
19 has found what appears to be a copy of the omnibus application
20 that was entered in court and signed by the judge. I haven't
21 marked it as an exhibit yet, but I would like to do that after
22 we make copies of it.

23 THE COURT: You don't mind if I look at this?

24 MR. CAMIEL: Not at all.

25 MR. SAMSON: We would have no objection to its

EXHIBIT 5

☐ Incident Rpt. ☐ Supplemental Rpt.

PROCESSED BY:

DATA ENTRY BY:

1 OF INCIDENT

DATE OF INCIDENT

PRESENT DATE

10-12-84

DAT

REVIEWED BY:

5

USE PATIENT PLATE

UNIVERSITY OF CALIFORNIA DAVIS
MEDICAL CENTER
SACRAMENTOTHERAPEUTIC/DIAGNOSTIC
PROCEDURES REPORT

032 084 97 17 4 3R

SPENCER, KATHRYN E.

F 01 13 70 EXP 10 84

762 / PED. ACC

03 AUG 04

08 30 04

All cases of Suspected Child Abuse Neglect are to be reported by telephone and in writing (by submitting this form) to the designated agencies (C and D below) within 36 hours. (Penal Code Section 11161.5 and 11161.7)

GENERAL INFORMATION

Patient's Name

Unit#

SPENCER, KATHRYN

Address

City

State

Phone

3930 Bechria

Sacramento

CA

482-6057

Age

Birthdate

Race

Sex

Date, Time of Examination

Place of Examination

5

1-13-79

C

F

8-30-84

Peds Acute

1:30

Reporting Party's Name

UCD Department

Phone

Kathryn Eells-Magee, M.D. Family Practice 453-3630

FAMILY—Parents:

Name (Last, First, Middle)

Birthdate

Sex

Race

Name (Last, First, Middle)

Birthdate

Sex

Race

Spencer DeAnne

F C

Clyde Ray Spencer

M C

Address

Address

3930 Bechria

Vancouver

Home Phone

Business Phone

Home Phone

Business Phone

Siblings:

Name

Birthdate

Sex

Race

Name

Birthdate

Sex

Race

1. Matthew

8yr

M

C

4.

2.

5.

3.

6.

Child's Family/Home Environment—Include risk factors in parent and/or child. Specify who is/are caretaker(s).

Katie lives with Mother and Siblings. Parents divorced. Father has visitation for six weeks in Summer, week in Easter, and two at Christmas every other year.

Previous reports of abuse of child or in family? ☐ Yes ☒ No If yes, describe when, who involved, etc.

Print Last Name

Signature

Date of Report

Eells-Magee

K. Eells-Magee

8/30/84

UNIVERSITY OF CALIFORNIA DAVIS
MEDICAL CENTER
SACRAMENTO

762 / PED ACC

032 084 97 17 4 3R

SPECIAL, ATHLETIC

F 1 17 70 EXP 10 84

4 PG 482 0057

08 30 84

THERAPEUTIC/DIAGNOSTIC
PROCEDURES REPORT

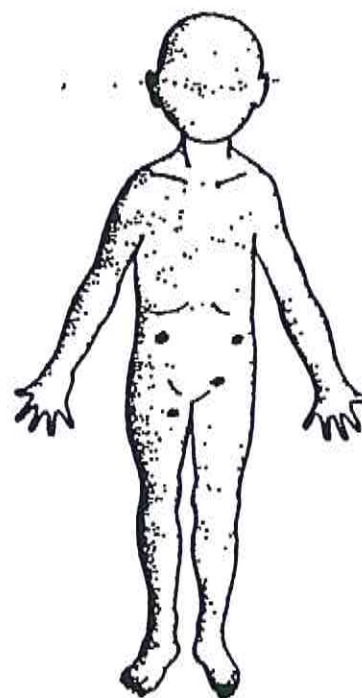
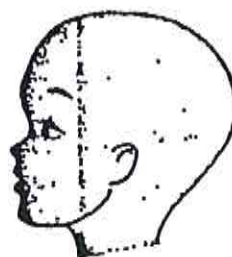
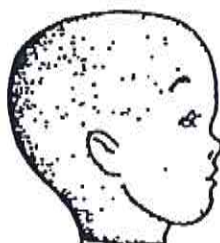
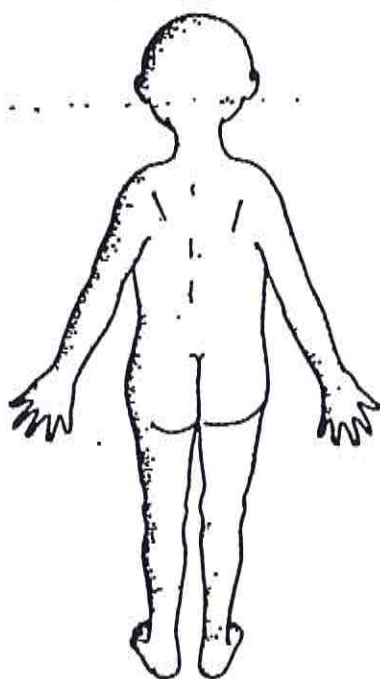
PHYSICAL EXAMINATION

Patient's General Appearance:

White female child cowering in her
mother's lap.Ht 110.5 cm 25th %ileWt 17.0 kg 15th %ile

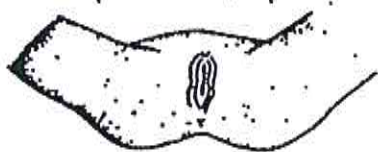
Hc _____ cm _____ %ile

Locate and describe in detail any injuries or findings related to maltreatment. Indicate location of lesions/findings; shade for bruises or burns. Beside each injury indicated note color, size, pattern, texture, and sensation. Note if recognizable imprint or bruise goes around curve.

4 erythema
bug bites

A pelvic examination should not be performed unless the parent, guardian or minor consent or unless necessary as part of treatment. See Department of Health Regulations Title 22, Division 2, Victims of Sexual Assault.

no
no erythema
no lacerations
no swelling



FINDINGS: Pelvic within normal limits.

Fundoscopic Examination—☐ Normal ☐ Abnormal ☒ Not doneDevelopment Assessment—☒ Normal ☐ Questionable ☐ Abnormal, by ☐ DDST ☐ Estimate ☐ OtherBehavioral Assessment—☐ Normal during visit ☒ Abnormal during visit (Specify) by child to speak to cleanX-ray bone survey—☐ Normal ☒ Not done ☐ Abnormal (findings) through examHemostasis tests performed—☐ PT ☐ PTT ☐ Platelets ☒ None ☐ Other _____ Results _____Cultures for gonorrhea performed—☒ genitalia ☒ throat ☒ anus. VDRL—☐ Done ☒ Not doneMenarche age _____ Periods regular? ☐ Yes ☐ No L.M.P. _____Pregnancy test—☐ Positive ☐ Negative ☒ Not performed

Signature

Print Last Name

Date of Report

Eells-Mance

Eells-Mance

8/30/84

762 / PED . ACC

08 30 64

**THERAPEUTIC/DIAGNOSTIC
PROCEDURES REPORT**

MALTREATMENT HISTORY:

no other said

Children were visiting father for 6 weeks during Summer. Returned to Mother on 8-26. Step Mother reported to Vancouver police that the father had molestied. Report was based on remarks Katie had made to Step Mother on 8-24-84. Katie refused to talk or answer questions during EXAM. She has refused to talk with Mother regarding Report. M. S. 12.

Child's story consistent with history of molestation.
No physical findings.

1. Reported to: Officer	ID No.	Department	Phone
<i>Pat F. [illegible]</i>		<i>Sheriff</i>	<i>440-5191</i>
Dependent Intake or CPS Worker		Department	Phone
	<i>CPS</i>		<i>366-2386</i>

2. Medical Follow-up: Date _____ Time _____
☒ Scan F/U Clinic ☐ P.M.D. (Name) 9-29-84
☐ UCD Clinic (Name) _____ ☐ Other _____
☐ None (Why not?) _____

3. Mental Health Follow-up: Date _____ Time _____
☒ Referred to Victim Witness
☐ None _____

4. Disposition:
Police Hold? ☐ Yes ☒ No
☐ Receiving Home ☐ Foster home ☐ Relative's home ☒ Parent's home ☐ Other
☐ Hospitalized

5. Other Treatment:

Print Last Name Eells-Magee	Signature [Signature]	Date of Report 8/30/84
--------------------------------	--------------------------	---------------------------

1997

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAYMOND SPENCER,

Petitioner,

vs.

JOSEPH KLAUSER, Warden, Idaho
State Institution; CHRISTINE
GREGOIRE, Attorney General,
State of Washington,

Respondents.

No. C94-5238RJB

COPY

DEPOSITION UPON ORAL EXAMINATION
OF
SHARON A. KRAUSE

DATE TAKEN: May 22, 1996

TIME: 10:30 a.m.

PLACE: Hall of Justice
Longview, Washington

SUZAN R. WELLS
Archer Associates, Inc.
P. O. Box 1092
Longview, Washington 98632
(360) 423-2195

**PLAINTIFF'S
EXHIBIT**

6

EXHIBIT 7

1 magnifying during an exam of a child, anal or
2 vaginally. It's my understanding that if there are
3 lesions or there's been tearing and healing, it may be
4 detected with a colposcope and it wouldn't by the naked
5 eye.

6 Q Have you been involved in cases before where the
7 prosecution has presented photographs that were taken
8 with colposcopic exam?

9 A Well, I'm usually excluded from the courtroom when
10 that's going on, but I'm sure -- I know there's been
11 cases I've been involved in where that was utilized by
12 the physicians.

13 Q Have you reviewed with physicians as a part of some of
14 your investigations photographs depicting physical
15 evidence of sex abuse through colposcopic exam?

16 A I don't know that I've ever sat down with a physician
17 and done that. But I've seen photographs in training.

18 Q Now, the report Exhibit No. 1 that you have in front of
19 you, do you know whether or not this report was ever
20 forwarded to the Clark County prosecutor's office?

21 A Like I explained, I'm told it wasn't in their file. If
22 they have all the other reports, I can't imagine them
23 not having this one. Also, based on Jim Peters and
24 knowing him and knowing how meticulous he is and knowing
25 historically what I would do, there is no doubt in my

1 mind if they didn't have a copy, he was aware of it when
2 I got it. We talked.

3 If CAIC -- If I have a prosecutor on a case, he may
4 not have the whole case file or I may still have some
5 reports I haven't shipped up to him, but there would be
6 no doubt in my -- 99 percent sure that he had this
7 information. I can't imagine him not having the report
8 if he had all the rest of the reports. And I'm told
9 that it was in Vancouver Police internal investigation
10 file that they did. So why would I send it to him and
11 not the prosecutor? That doesn't make sense.

12 Q Do you know how it was that Vancouver Police Department
13 received your reports, your investigative reports in the
14 Spencer case?

15 A Not really. I don't remember -- I know that they were
16 doing an investigation. My mind just went blank. Jim
17 Holtz with Vancouver Police worked on it. I spoke to
18 him. I think he may have done some interviews. It
19 seems like there were other people. I don't remember if
20 they got them from the prosecutor or they got them from
21 me or they got them from records. I don't know.

22 Q Now, you indicated that you spoke I guess recently with
23 Kim Farr, deputy prosecuting attorney. And as I
24 understand it, Kim Farr indicated that a review had been
25 done of the prosecutor's files and they didn't have the

EXHIBIT 8

Michael Davidson

July 25, 1996

1
2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA
5
6 CLYDE RAYMOND SPENCER,)
7 Petitioner,)
8 v.) No. C94-5238 RJB
9 JOSEPH KLAUSER, Warden, Idaho)
10 State Institution; CHRISTINE)
11 GREGOIRE, Attorney General,)
12 State of Washington,)
13 Respondents.)
14
15 DEPOSITION OF MICHAEL DAVIDSON
16
17
18
19
20
21
22
23
24
25

1
2
3
4 A P P E A R A N C E S
5
6 FOR THE PETITIONER: Peter Camiel
7 Attorney at Law
8 Mair, Camiel, & Kovach
9 710 Cherry Street
10 Seattle, WA 98104
11 (206) 624-1551
12
13
14
15
16
17
18 FOR THE RESPONDENTS: John L. Samson
19 Attorney at Law
20 Assistant Attorney General
21 P.O. Box 40116
22 Olympia, WA 98504
23 (360) 586-1445
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
21

Michael Davidson

July 25, 1996

Page 20

Page 22

1 allegation was that an adult male had penile vaginal
2 intercourse with a five-year-old child, in your experience
3 would you expect there to be any medical findings by a
4 doctor?

5 MR. SAMSON: Same objection as before, to
6 the extent it calls for a medical conclusion.

7 A. I would have to -- and we would have normally relied
8 on a doctor's opinion because I couldn't make an objective
9 call on that.

10 Q. Let me change the question a little bit. Based on
11 your experience, if there was an allegation that an adult
12 male had penile vaginal intercourse with a five-year-old
13 child, would the fact that there was an examination conducted
14 and the doctor found no physical evidence, would that be
15 significant to a defendant, based on your experience?

16 A. That's really a difficult hypothetical because we're
17 presupposing that we know the degree of penetration that was
18 made. There's a lot of factors that are involved in that.
19 Penetration can be very, very slight. There might not be
20 evidence, but yet it still could have happened.

21 Q. Understanding that it still could have happened,
22 despite the fact that there's no physical evidence, if a
23 doctor conducts an examination where those are the
24 allegations, do you believe that a defendant would consider
25 it significant if the doctor found nothing abnormal?

Page 21

Page 23

1 MR. SAMSON: I would object on the grounds
2 that it calls for speculation as to what a defendant would
3 believe. And I would object to the extent it calls for a
4 legal conclusion as to what is material.

5 A. I would have to say the same thing as I did before,
6 again, I can't make that determination because there may be a
7 number of factors that are involved here, besides just the
8 physical evidence.

9 Q. I take it, in your experience as a police officer,
10 you understand what the term discovery means in a criminal
11 case?

12 A. I believe so, yes.

13 Q. And you understand that the prosecuting attorney has
14 discovery obligations?

15 A. Yes.

16 Q. That is, the prosecutor has certain obligations to
17 disclose certain information to the defendant's attorney?

18 A. Yes.

19 Q. And do you understand that one of the prosecutor's
20 obligations is to disclose exculpatory information to the
21 defense attorney?

22 A. I believe I understand that, yes.

23 Q. In your opinion, would a prosecutor be required to
24 disclose this report to a defendant's attorney?

25 44 MR. SAMSON: I would object to the extent

1 that it calls for a legal conclusion.

2 A. I would have to rely on the prosecutor's opinion for
3 that, as well, because I don't know whether these would,
4 necessarily, fall within the guidelines of discovery.

5 Q. You think it would be proper for the sheriff's
6 department not to forward this report to the prosecutor?

7 A. The only way that I can see us not forwarding this
8 to the prosecutor would be if the prosecutor didn't feel it
9 was material or if the investigator felt that there was
10 nothing of significance to the prosecutor.

11 Q. How would the prosecutor know whether it was
12 material or not unless they saw the report?

13 A. Conversation with the investigator.

14 Q. In your experience with the Clark County Sheriff's
15 Office, have there been situations where you have had
16 discussions with the deputy prosecutor about a report, and
17 the prosecutor has indicated that you don't need to forward
18 that report to them?

19 A. I certainly can't off the top of my head, although I
20 can think of certain instances where I've done specific
21 things like that. An examination on things that bore out no
22 significant information, they didn't want to see the report.

23 Q. Okay. Can you recall any case where there was a
24 medical examination concerning an alleged sex-crime victim
25 where a prosecutor has indicated they didn't ever want to see

1 the report?

2 A. Certainly not that I can recall.

3 Q. You've already referenced two interviews, or
4 attempted interviews, you've had with Ray Spencer. Did you
5 also have contact with Mr. Spencer after he was incarcerated
6 at the Clark County Jail?

7 A. Not to my recollection, no, sir.

8 Q. Do you recall whether you went up to the Clark
9 County Jail, ever, after Mr. Spencer was incarcerated, to
10 visit him?

11 A. No.

12 Q. When you indicate no, are you indicating that you
13 didn't go up there or that you don't recall?

14 A. I'm indicating that I didn't go up there.

15 Q. Did you ever tell anyone that you went up to the
16 Clark County Jail and visited with Ray Spencer?

17 MR. SAMSON: I'm going to have to object,
18 Peter, unless you can show how this is relevant to the issues
19 currently before the District Court. I don't believe it's
20 relevant. The Ninth Circuit has affirmed the denial of a
21 claim regarding force of plea and the alleged visits of
22 Sergeant Davidson at the Clark County Jail. And I don't
23 believe that it's relevant. So unless you can tie it to the
24 issues, I would object on the grounds of relevancy.

25 MR. CAMIEL: For the record, one of Mr.

EXHIBIT 9

CLARK COUNTY SHERIFF'S OFFICE, WASHINGTON
UTILITY REPORT

CASE #84-8506
SUPPLEMENTAL RPT

STATUTORY RAPE IN THE FIRST DEGREE, RCW 9A.44.070
LOCATION OF INCIDENT:
DATE OF INCIDENT:

DATE & TIME: 10-18-84 2030 hours

LOCATION: Holiday Inn, Room #135
5321 Date Street
Sacramento, California 95841-2597

INCIDENT: Interview with Victim

VICTIM: SPENCER, Kathryn E. dob: 01-13-79
aka: Katie
aka: Kathy
3930 Becerra Way
Sacramento, California 95821 phone: (916) 482-6057

SUSPECT: SPENCER, Clyde Ray dob: 01-09-48
aka: Ray SPENCER
17681 NE Lucia Falls Road
Yacolt, Washington phone: 687-1407
Work phone: (206) 696-8292



remember anything her daddy said when that was happening and Katie stated, "I don't remember." I asked her if she was standing up or what when it happened and Katie stated, "No, I was laying on my back." I asked her if she could show me what happened with the dolls and at that time Katie picked up the anatomically correct child female doll and placed it on the pillow face up. I asked Katie, "Where were you?" and Katie picked up the female doll, hit the male doll and stated to me, "Put him right there," pointed to the pillow with the child female doll and stated, "I'll show you." I picked up the male doll and asked Katie, "How should he be laying?" and Katie stated, "My dad was laying on his back. Put him on his back." When I had placed the male doll face up on the pillow Katie immediately put the female doll on to of the male doll. Again, I observed her being careful to line the vaginal area of the female doll up with the penis of the male doll. I asked Katie, "Did Big Matt and Little Matt see that?" and again Katie pointed towards the headboard behind us and stated, "No, they were over there and Dad and me were laying on the blanket." I asked Katie, "What did your daddy have on when that happened?" and Katie stated, "Noth--ing." I asked her what she had on and Katie stated, "Noth--ing." Katie then stated, "Ick!" I indicated to Katie that she had told me she had on her nightgown and panties, and Katie stated, "Not when he did that." I asked her if she could remember how her clothes got off and at that time she pointed to her chest with her finger. Katie then stated, "My daddy made me do that." I asked her what her daddy made her do and Katie stated, "He makes me take my clothes off."

I stated to Katie, "What happened after your clothes were off?" and Katie stated, "That's when my daddy's wiener sticks up." I asked her what happened then and Katie stated, "Well, he hurt me then." I asked her if she could show me how he hurt her and Katie stated, "I can show you what hurt me." I asked her if she could do that with the dolls and Katie at that time picked up the child female doll and inserted the penis of the male doll into the vaginal opening of the child female doll that she had indicated was her. I asked Katie if she could remember if her daddy had said anything when that happened, advising her that it was really important to remember what he

EXHIBIT 10

first thing he did was walk into the house and as soon as he saw the guns were gone from the cabinet he was screaming over and over about his 'fucking guns' and that he wanted them." Shirley SPENCER stated to me, "He was saying all kinds of things in front of Little Matt and I just couldn't understand what he was doing."

Prior to terminating my interview with Shirley SPENCER on 02-27-85 I made arrangements for her to bring her son to the Clark County Sheriff's Office on the morning of the 28th for the purpose of my interviewing Matt regarding the concerns that he had been sexually involved with his step-father, Ray SPENCER.

DATE & TIME: 02-28-85 0930 hours
INCIDENT: Interview with Matt HANSEN

With the permission of Shirley SPENCER the interview with Matt was done in an interview room located in the Detective Unit of the Clark County Sheriff's Office with only Matt and I present.

During the initial part of my conversation with Matt we talked about general topics. We talked about Matt's school and what he did in school; we talked about things he liked to do and at one point Matt and I practiced writing his name, my name and his mother's name. I indicated to Matt that I was a policeman and at one point I told him that I was a policeman because I liked to help people; however, sometimes we needed people to help us and a lot of times people who helped me were children. I told Matt that I wanted to talk to him because maybe he would be able to help me, too.

Matt appeared to be very verbal and there was no question that he was understanding what I was talking to him about. I indicated to Matt that sometimes I talked to children whose private parts had been touched by someone. I asked Matt if he knew what private parts were and shook his head, indicating that he did. I asked him if his nose would be a private part and he shook his, smiled and indicated that it wouldn't be. I asked Matt if his elbow would be a private part; he indicated it wouldn't. I asked him if his knee would be a private part; he indicated that it wouldn't. I asked him if his bottom



sorry that it hurt him, and at that time Matt stated to me, "And he hurt my bottom, too." I asked Matt who hurt is bottom and he stated, "My dad, Ray SPENCER. He puts his finger in my hole." I asked him where he was when that happened and Matt stated, "We were in the living room and in the shower, and in my mom's room." I asked Matt where his mother was when that happened and Matt stated to me, "Mostly when he does things my mom is at work."

I asked Matt if anything else happened to his body that he wanted to talk about so it would not be "bugging him" and Matt stated to me, "Well, he does something else to me." I asked Matt if he could tell me what the something else was and Matt stated, "He puts his pee-pee in my bottom and that really hurts and that makes me really cry." I asked Matt where he was when that happened and Matt stated, "In the shower." I asked him where the shower was and Matt stated, "At my house and it happens upstairs, too." I asked Matt who was upstairs when that happened and Matt stated, "Just me and my dad, and my mom was at work when it happened." I asked Matt what happened upstairs and Matt stated, "That's when he hurts my bottom side with his pee-pee, and he made me touch his bottom side, and he made me touch his pee-pee, too." I asked Matt what he had on when that happened and Matt stated, "I never have nothing on because he makes me take my clothes off."

I asked Matt if he ever saw anything come out of his daddy's pee-pee and Matt stated, "Yes, pee." I asked Matt if his daddy's pee looked like his pee and Matt stated, "No." I asked Matt what color his daddy's pee was and Matt stated, "It's white." I asked Matt where his daddy's pee goes when it comes out and Matt stated, "His pee goes in the toilet." I asked Matt if the pee ever went any place besides the toilet and at that time Matt stated, "Sometimes it gets on the floor and sometimes it gets on my hand and I have to wipe my bottom off with a paper towel when he gets it on my bottom."

I asked Matt if anything ever happened with his body anyplace besides at his house. Matt shook his head, indicating that it had. I asked Matt if he could tell me where something else happened and Matt stated, "At the motel." I asked him who was at the motel and Matt stated, "Just me and my dad cause my mom wasn't there." I asked him if he could tell me about what happened at the motel and Matt stated, "Well, he touched my pee-pee in the bathroom and then he put his pee-pee in my bottom." I asked Matt where he was

when his daddy put his pee-pee in Matt's bottom and Matt stated, "Well, I had to sleep with him and he kissed my bottom and he kissed my pee-pee, too."

At that time I indicated to Matt that I had dolls that had pee-pees and asked Matt if I got the dolls if he could show me about what happened with his daddy. Matt indicated that he could and at that time I got the anatomically correct dolls, which include one adult male doll, one adult female doll and one child female doll. I held up the male doll and asked who that was and Matt stated, "That's me." Matt then looked at the other two dolls and stated, "Those are girls so this is my dad (he held up the male doll again." I asked Matt if he could tell me with the dolls what happened in the bathtub and at that time Matt sat the male doll upright and indicated that that doll was "going to be him." Matt then picked up the adult female doll and sat it facing the male doll and stated, "This will have to be my dad because I don't want to be this one." Matt then bent the head of the male doll down to the genital area of the female doll and stated, "This is what he did." I asked Matt what part of him touched his daddy in the tub and Matt stated, "That's when I had to put my mouth on this." At that time Matt pointed to the penis on the male doll and then as he lifted the penis up in an erect position, Matt stated to me, "But his pee-pee sticks up like this and that make it hurt my mouth." I asked Matt what his daddy called a pee-pee and Matt stated, "I think he might call it a wiener."

I asked Matt if his daddy ever said any bad words when he was around him and Matt stated, "He says mostly mean, bad words." I asked him if he could remember any of the words and after Matt thought for a few minutes he advised me that "he forgot."

I asked Matt if he could show me what else happened with his daddy and at that time Matt indicated to me that the chair in the interview room was going to be "the bed." Matt placed the male anatomically correct doll on the chair, face up with the legs hanging over the edge. Matt then picked up the female doll and placed the head of the female doll on the penis of the male doll. I asked Matt who the female doll was and he stated, "This is gonna be my dad again, and this is me (pointing to the male doll)." I asked Matt what his dad was doing and Matt stated, "This is when he was kissing my pee-pee." I asked Matt where the bed was and Matt stated, "At the motel." I asked Matt if anything else happened at the motel and at that time Matt placed the hand of the

female doll on the penis of the male doll and stated, "He touched this with his hand, too." I pointed to the penis on the male doll and asked Matt, "Now, what do you call this?" Matt stated, "I call that my pee-pee."

I stated to Matt, "Now, what happened to your pee-pee at the motel?" Matt stated, "He touched my pee-pee with his hand and his mouth at the motel." I asked Matt if anything else happened at the motel and Matt stated to me, "He hurt my bottom there, too, with his pee-pee." I asked Matt if he could show me how that happened and at that time I observed Matt turn the male doll over, placing it face down with the legs still extending over the edge of the chair, and Matt placed the female doll lying on top of the male doll. Matt stated to me, as he pointed with his finger to the buttocks of the male doll, "He puts his pee-pee in this hole."

At that time I asked Matt if he ever saw his daddy touch any other children's body and Matt stated, "He touched my best friend's body." I asked Matt who his best were and Matt stated, "They're Big Matt and Kathryn."

I asked Matt where Kathryn was when that happened and Matt stated, "On my dad's bed." I asked him who else was there and Matt stated, "My dad was there and that's when he did it to her, and Kathryn cried, too." I asked Matt if he could remember where his mom was when that happened and Matt stated, "My mom was at work." I asked Matt if he could show me what happened to Kathryn and at that time he picked up the female doll and I observed him carefully placing the penis of the male doll in the vaginal opening of the female doll and at that time Matt stated, "You have to put this all the way in and that's what he did to Kathryn." I asked Matt if anything else happened to Kathryn and Matt turned the female doll over and placed the penis on the buttocks of the female doll and stated, "And his pee-pee was like this in her bottom and that hurts her too, and she cries just like me when it hurts." I asked Matt where that happened and Matt stated, "In my house." I asked Matt how many times he saw that happen to Kathryn and Matt stated, "It happened lots of times."

I asked Matt if he ever saw his daddy do anything to anyone besides Kathryn and him and he stated, "My dad puts his finger in Big Matt's bottom, just like he does to me." I asked Matt where he was when that happened and Matt stated, "At my house." I asked him if he ever saw anything

else happen to Big Matt and Matt stated to me, "My daddy puts his pee-pee in Big Matt's bottom and that hurts Big Matt and he cried, too."

Matt then began talking with me again about having to touch his father's penis and I asked Matt if his father asked him to touch it in any special way. Matt stated to me, "He just tells me to move my hand and I had to."

I asked Matt if his daddy ever said anything about telling and Matt stated, "He said if I told he would do it again."

At that time I indicated to Matt that I wanted to try to figure out when things were happening so I would know for sure and asked Matt if he could tell me again the last time something happened with his daddy. Matt thought for several minutes and then stated, "Oh, yah, at the motel, I think." (During my interview with Shirley SPENCER she indicated that the last time Matt was alone with Ray SPENCER was on the evening of February 16th when Matt spent the night with Ray at the Salmon Creek Motel.) I drew on a sheet of paper a sun and below that drew three stick figures, indicating to Matt that that was the summer time when Kathryn and Big Matt visited him, and on the other end of the paper I drew a square with windows, stating, "This is a motel." I said to Matt, "This is the summer time when Kathryn and Big Matt visited you," pointing to the area around the stick figures. I asked Matt, "Did it happen after the motel?" and Matt stated no, that it hadn't. I pointed to the area where the stick figures were and stated to Matt, "This is the summer time when Big Matt and Kathryn were visiting you. Did something happen then?" Matt stated, "Yah, that's when he was doing it to Big Matt and Kathryn and me." I asked Matt where he was when that happened when Kathryn and Big Matt were visiting and Matt stated, "The same thing, mostly in my mom's bedroom when she was at work." I asked Matt what he had on and he indicated again that both he and his father were naked. I told Matt to think about what had happened during the summertime when Kathryn and Big Matt were visiting and asked him if he could tell me what happened with his daddy. Matt stated to me, "Just the same things. He puts his pee-pee in my bottom and he makes me kiss his pee-pee and he kissed my pee-pee." I asked Matt if the "bubble thing in the bathtub" happened when Big Matt and Kathryn were visiting and after thinking for several minutes Matt stated, "No, cause they

went home." I asked him if that was after the motel thing and Matt stated, "No, that was before."

In my discussion with Shirley SPENCER she indicated that the time that Matt appeared to be so frightened of the bubble bath was after Kathryn and Big Matt had returned to their mother's in Sacramento.

I pointed to the drawing again and stated to Matt, "This is before Big Matt and Kathryn came to visit you," pointing to an area in front of the three stick figures and then asked Matt, "Did anything ever happen to you before Kathryn and Big Matt came to visit?" Matt shook his head and stated, "He did it then, too." I asked him where he was when that happened and Matt stated, "At my house." Matt then took my pencil and drew on the paper towards the bottom of the page. I asked Matt what he was drawing and Matt stated, "This is God and my daddy doesn't love God cause that's why he does that to us."

At that time Matt indicated that he was tired and "he didn't want to talk about it anymore cause he was tired." I advised Matt that I was also tired and asked him if maybe we could talk some other day about what else he remembered. Matt indicated that he would come back to talk to me; however, he "sort of forgot what else happened, now."

At that time the conversation with Matt was terminated, and after I spoke with Matt, I spoke with Shirley SPENCER alone while Matt colored. During that conversation I advised Shirley SPENCER of the specifics regarding what her son had told me. After we talked and Shirley SPENCER was able to compose herself, she and I went into the room and in Matt's presence I indicated to him that I had told his mother everything we talked about and that I wanted to make sure that I didn't forget anything. In Matt's presence I repeated in front of his mother the specifics regarding what he said had occurred.

This investigation is pending.

EXHIBIT 11

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT TACOMA

4 CLYDE RAYMOND SPENCER,)
5) Docket No. C94-5238RJB
6 Petitioner,)
7) Tacoma, Washington
8 v.) September 6, 1996
9) 1:00 p.m.
10)
11 JOSEPH KLAUSER, Warden,)
12 Idaho State Institution;)
13 CHRISTINE GREGOIRE, Attorney)
14 General, State of Washington.)
15 Respondent.)

16 VOLUME IV
17 TRANSCRIPT OF TRIAL
18 BEFORE THE HONORABLE ROBERT J. BRYAN
19 UNITED STATES DISTRICT JUDGE.

20 APPEARANCES:

21 For the Petitioner: PETER A. CAMIEL
22 PETER MAIR
23 Mair, Camiel & Kovach, P.S.
24 710 Cherry Street
25 Seattle, Washington 98104

For the Respondents: JOHN J. SAMSON
DONNA H. MULLEN
Assistant Attorneys General
Post Office Box 40116
Olympia, Washington 98504-0116

Court Reporter: Julaine V. Ryen
Post Office Box 885
Tacoma, Washington 98401-0885
(206) 593-6591

Proceedings recorded by mechanical stenography, transcript
produced by Reporter on computer.

PLAINTIFF'S
EXHIBIT
11

1 consult with counsel with a reasonable degree of rational
2 understanding. His mental illness and the drugs he ingested did
3 not substantially impair his ability to make a reasoned choice
4 among the alternatives presented or to understand the nature and
5 consequences of his actions. He understood the nature of the
6 charges, the consequences of his plea, and he was able to assist
7 in his own defense. He evidenced at that time coherence and
8 rationality and a lack of psychosis. He did not exhibit unusual
9 behavior, and I think that he was legally competent and not
10 entitled to relief on that basis.

11 Mr. Spencer testifies here that he doesn't remember
12 anything. He doesn't remember a lot of things in this case, he
13 tells us, and, you know, I don't have a direct answer for that,
14 but certainly it is to his advantage not to remember, or to
15 choose not to remember those events. I'm not satisfied that I
16 really believe that he doesn't remember the entry of the plea.

17 Now, so far as the Brady issues are concerned, there are two
18 prongs of this. Of course, one is the first question, whether
19 the medical report or reports should have been turned over; and
20 second is the question of the effect of failure to turn those
21 over. I want to address the first question tonight.

22 Based on everything I've read in this file, I am afraid that
23 I've come to the conclusion that Mr. Davidson, formerly of the
24 Clark County Sheriff's Office, I guess -- or was that the
25 Vancouver police? The sheriff's office, I believe -- that he's

1 just not very credible, and I don't particularly believe what he
2 has told us. Ms. Krause doesn't recall this. Shirley Spencer,
3 in her affidavit, had a very vague recollection -- well, Shirley
4 Spencer didn't recall the part about the lad's medical report,
5 Exhibit 2. And Ms. Spencer, in regard to that, had some very
6 vague and unconvincing testimony about that medical report.

7 It's hard in considering Exhibit 2 to reconstruct what
8 happened and what are the probabilities about that report. I
9 sometimes have to look inward and see what I really think, and I
10 guess what I think about that is that I think that the sheriff's
11 office was aware that Matthew Hansen had been to a doctor for
12 this exam. I think he went as a result of the recommendation of
13 Detective Krause. I'm not at all sure, however, that the
14 sheriff's department had a report to hand over at that time. I
15 don't know at this point where this report came from or whether
16 they had it. I guess the evidence on that subject is
17 sufficiently cloudy, so my conclusion is that probably that
18 report was not in the hands of the sheriff's office or the
19 prosecution prior to the plea.

20 Clearly, however, Exhibit 1 was in the hands of the
21 sheriff's office. Clearly, they had an obligation, based on the
22 omnibus order, to hand that document over to the defense, and
23 they had that obligation -- if I can find the right exhibit;
24 Exhibit 32 -- they had that obligation clearly on the 25th of
25 January of 1985 and thereafter.